United Nations A/63/570

General Assembly

Distr.: General
25 November 2008

Original: English

Sixty-third session
Agenda item 118
Programme budget for the biennium 2008-2009

Conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda

Report of the Advisory Committee on Administrative and Budgetary Questions

1. The Advisory Committee on Administrative and Budgetary Questions has considered the report of the Secretary-General on the conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda (A/62/538/Add.2). During its consideration of the matter, the Advisory Committee met with representatives of the Secretary-General, who provided additional information and clarification.

2. The report of the Secretary-General was submitted in response to paragraph 11 of General Assembly resolution 61/262, in which the Assembly requested the Secretary-General to report on options for designing pension schemes for the members of the International Court of Justice and the judges of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, including defined-benefit and defined-contribution schemes, taking into account the possibility of calculating pensions on the basis of the number of years served rather than the term of office.

08-61945 (E) 011208

3. The Advisory Committee notes that the Secretary-General has proposed essentially only one option and that he has relied on a consultant, rather than seeking the expertise available within the Organization. In the view of the Committee, the advice of the International Civil Service Commission and the United Nations Joint Staff Pension Fund would have been helpful in developing options.

4. Under the current arrangements, the pension scheme for members of the International Court of Justice is non-contributory. The retirement age is 60 years. With effect from 1 January 2001, the pension of members of the Court is calculated at one half (50 per cent) of the final annual salary for members who complete a full nine-year term; a proportional reduction is made in respect of members who complete less than a full nine-year term. For members serving in office as at 31 December 1998, who have been or are re-elected for service beyond a full nine-year term, an additional one three-hundredth of the annual pension benefit for each additional month of service in excess of nine years is granted up to a combined maximum pension of no more than two thirds (66.67 per cent) of the final annual salary.

5. The pension scheme for judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, under the current arrangements, is similarly non-contributory. The retirement age is 60 years. With effect from 1 January 2001, the pension benefits of judges of the Tribunals are calculated at two ninths (22.22 per cent) of the final annual salary for judges who complete a full four-year term; a proportional reduction is made in respect of judges who complete at least three years of service but less than a full four-year term. For judges who are re-elected for service beyond a full four-year term, an additional one one-hundred-and-thirty-third of the pension benefit for each additional month of service is granted up to a combined maximum pension of no more than eight twenty-sevenths (29.63 per cent) of the final annual salary.

6. The following example illustrates how the retirement benefits of members of the International Court of Justice and judges of the Tribunals, who came on board prior to 1 January 2001 can be estimated in terms of United States dollars based on the provisions outlined in paragraphs 3 and 4 above, assuming that the final annual salary is $170,080 for members of the International Court of Justice and judges of the Tribunals:

(a) The retirement pension for members of the International Court of Justice, upon completion of a full nine-year term, would amount to $85,040 (i.e., 50 per cent of the final annual salary). A combined maximum retirement pension for members of the Court upon completion of two full nine-year terms, i.e., a total of 18 years, may not exceed $113,400 (66.67 per cent of the final annual salary);

(b) The retirement pension for judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda who came on board prior to 1 January 2001, would, upon completion of a full four-year term, amount to $37,792 (i.e., 22.22 per cent of the final annual salary). A combined maximum retirement pension for judges of the Tribunals who are re-elected for service beyond a full four-year term may not exceed $50,395 (i.e., 29.63 per cent of the final annual salary).

7. As indicated in paragraph 11 of the report of the Secretary-General (A/62/538/Add.2), on the occasion of the comprehensive reviews of the conditions

of service and the pension benefits of the judges undertaken in 2001 and 2006, the Secretary-General shared the concerns expressed by the two Tribunals that the existing disparity between the pension benefits of the judges of the Tribunals and the judges of the International Court of Justice results in discrimination against the judges of the Tribunals not warranted by the statutes of the Tribunals.

8. The Secretary-General indicates that, in compliance with the request of the General Assembly contained in paragraph 11 of its resolution 61/262, he sought the advice of a consulting firm and commissioned a study on options for designing pension schemes, including defined-benefit and defined-contribution schemes, taking into account the possibility of calculating pensions on the basis of the number of years served rather than the term of office (A/62/538/Add.2, para. 13). The Secretary-General concludes that the study conducted by the consultants corroborates in technical terms most of the provisions provided for in the current respective pension schemes approved by the General Assembly for the members of the International Court of Justice and the judges of the International Tribunals (ibid., para. 17). Furthermore, the Secretary-General expresses the view that the current level of pension for sitting members of the Court and judges of the Tribunals, and for those judges and their dependants who are currently receiving pensions, should not be diminished (ibid., para. 18).

9. On 3 April 2008, the General Assembly approved the annual remuneration of members of the Court and judges of the Tribunals at a base salary of $158,000 plus post adjustment. The Secretary-General indicates that it appears appropriate that the Assembly should take note of the reduction in the annual base salary and its effect on the calculation of pensions, and propose a transitional measure or a method of calculation that would, in its view, be appropriate under such circumstances (A/62/538/Add.2, para. 20).

10. With respect to the International Court of Justice, the Secretary-General proposes the following (see A/62/538/Add.2, para. 27):

(a) The pension scheme for the members of the International Court of Justice should remain a defined-benefit scheme;

(b) The pension scheme should remain non-contributory;

(c) The retirement benefit of the members of the International Court of Justice should continue to be correlated to salaries, as are judicial and other pensions, and should be defined as being equal to 55 per cent of the annual net base salary (excluding post adjustment) by reference to nine years of service;

(d) The level of pension should be determined by reference to years of service rather than a term of office;

(e) A member of the International Court of Justice who is re-elected should receive one three-hundredth of his or her retirement benefit for each further month of service, up to a maximum pension of three fourths of annual net base salary (excluding post adjustment);

(f) The retirement age should remain at 60 years of age;

(g) The actuarial reduction factor, at a rate of 0.5 per cent per month, should continue to be applied in the case of early retirement prior to age 60;

(h) The level of the retirement benefit should be adjusted on the occasion of increases in the annual net base salary of the members of the International Court of Justice;

(i) Pensions in payment should also be adjusted on the occasion of increases in the annual net base salary of the members of the International Court of Justice.

11. **The Advisory Committee recommends approval of the Secretary-General's proposals as reproduced in paragraphs 10 (a), (b), (d), (f), (g), (h) and (i) above.**

12. As regards paragraph 10 (c) above, the Advisory Committee recognizes that that proposal is intended to avoid a decrease in pension entitlements. At the current level of the calculation (50 per cent of annual base salary), pension benefits would be decreased as a result of the fact that the General Assembly has changed the base on which pensions are calculated from $170,080 to $158,000. **While the Advisory Committee shares the Secretary-General's view that the current level of pension for sitting members of the Court and for those judges and their dependants who are currently receiving pensions should not be diminished, it does not agree that it is necessary to increase the base on which pensions are calculated from 50 per cent to 55 per cent. The Committee instead recommends that the retirement benefit of the members of the International Court of Justice should continue to be based on salaries and should be 50 per cent of the annual net base salary (excluding post adjustment), or $85,040, whichever amount is higher, by reference to nine years of service.** The Committee points out that future consolidation of post adjustment multiplier points into base salary will eventually increase the base on which the pensions are calculated. It also points out that under the current arrangements, a member of the International Court of Justice who is re-elected is entitled to receive one three-hundredth of his or her retirement benefit for each further month of service beyond nine years.

13. **With regard to the proposal to increase the maximum pension from two thirds to three fourths of annual base salary (see para. 10 (e) above), the Advisory Committee is of the view that the current level of the maximum pension set at two thirds of annual base salary provides adequate recognition of service beyond the nine years, especially taking into account the fact that the pension schemes for members of the International Court of Justice are non-contributory. The Committee recommends, accordingly, that a member of the International Court of Justice who is re-elected should receive one three-hundredth of his or her retirement benefit for each further month of service beyond nine years, up to a maximum pension of two thirds of annual net base salary (excluding post adjustment).**

14. With regard to the proposal to maintain the retirement age at 60 years of age (see para. 10 (f) above), the Committee notes that in many countries, serving judges retire at an advanced age. Accordingly, when making proposals in the context of the next review of the conditions of service of the judges, the Secretary-General may wish to consider the issue of raising the age of retirement.

15. With respect to the International Tribunals, the Secretary-General proposes the following (see A/62/538/Add.2, para. 27):

(a) The pension scheme for the judges of the International Tribunal for the Former Yugoslavia and the judges of the International Criminal Tribunal for Rwanda should remain a defined-benefit scheme;

(b) The pension scheme should remain non-contributory;

(c) The retirement benefit of the judges of the Tribunals should continue to be correlated to salaries, as are judicial and other pensions, and should be defined as being equal to 55 per cent of the annual net base salary (excluding post adjustment), assuming completion of a period of service of nine years;

(d) The level of pension should be determined by reference to years of service rather than a term of office;

(e) A judge of the International Tribunal for the Former Yugoslavia or of the International Criminal Tribunal for Rwanda who has been or will be re-elected or extended for any subsequent term will receive a retirement benefit for each further month of service, by reference to the proportion of annual pension which the number of months of his or her service bears to 108 months;

(f) A judge of the International Tribunal for the Former Yugoslavia or of the International Criminal Tribunal for Rwanda who has been or will be re-elected should receive one three-hundredth of his or her retirement benefit for each further month of service, up to a maximum pension of three fourths of annual net base salary (excluding post adjustment);

(g) The retirement age should remain at 60 years of age;

(h) The actuarial reduction factor, at a rate of 0.5 per cent per month, should continue to be applied in the case of early retirement prior to age 60;

(i) The level of the retirement benefit should be adjusted on the occasion of increases in the annual net base salary of the judges of the Tribunals;

(j) Pensions in payment should also be adjusted on the occasion of increases in the annual net base salary of the judges of the Tribunals.

16. **The Advisory Committee recommends approval of the Secretary-General's proposals as reproduced in paragraphs 15 (a), (b), (d), (e), (g), (h), (i) and (j) above.**

17. **In line with its recommendations on the International Court of Justice (see paras. 12 and 13 above), the Advisory Committee recommends that the retirement benefit of the judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda should continue to be based on salaries and should be 50 per cent of the annual net base salary (excluding post adjustment), or $85,040, whichever amount is higher, assuming completion of a period of service of nine years. The Committee also recommends that a judge of the International Tribunal for the Former Yugoslavia or of the International Criminal Tribunal for Rwanda who has been or will be re-elected should receive one three-hundredth of his or her retirement benefit for each further month of service beyond nine years of**

service, up to a maximum pension of two thirds of annual net base salary (excluding post adjustment).

18. The Advisory Committee was informed, upon enquiry, that the financial implications of the Secretary-General's proposals reflected in the table that follows paragraph 29 of his report (A/62/538/Add.2) should be updated as follows:

(a) *International Court of Justice*. In the light of the recent decision of the General Assembly on the re-election of some judges whose current terms of office expire on 5 February 2009, only three judges are retiring. Accordingly, the financial implications in respect of the International Court of Justice for the biennium 2008-2009 are revised from $8,800 to $6,300. The biennial requirements subsequent to the biennium 2008-2009 are estimated at $82,000, assuming that all sitting judges would retire at the end of their current tenure;

(b) *International Tribunal for the Former Yugoslavia and International Criminal Tribunal for Rwanda*. The Security Council, in its resolutions 1824 (2008) and 1837 (2008) related to, respectively, the International Criminal Tribunal for Rwanda and the International Tribunal for the Former Yugoslavia, extended the terms of office of the judges concerned of the two Tribunals in order to enhance the effectiveness of trial proceedings and contribute towards ensuring the implementation of the respective completion strategies. According to the Secretariat, on the basis of the latest information, there would be no financial implications for the biennium 2008-2009 resulting from the proposals of the Secretary-General pertaining to the two Tribunals. At present, the financial implications beyond 2009 for both Tribunals are estimated at $1,135,500 per biennium for the International Tribunal for the Former Yugoslavia and $918,200 per biennium for the International Criminal Tribunal for Rwanda and are based on the assumption that all current judges would have retired by the end of December 2010.

19. **The Advisory Committee points out that, should the General Assembly approve the observations and recommendations of the Committee set out above, there would be consequential reductions in the financial implications. Accordingly, the Committee recommends that the Secretary-General provide the Assembly with revised estimates of programme budget implications for 2008-2009 that would result from the changes in the pension scheme for the members of the International Court of Justice as recommended by the Committee. The related resource requirements should be reflected in the context of the relevant performance report for the biennium 2008-2009.**